BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: MICHAEL V. Claimant, vs. SAN ANDRES REGIONAL CENTER Service Agency.	OAH No. N 2006110143

DECISION

Administrative Law Judge Cheryl R. Tompkin, State of California, Office of Administrative Hearings, heard this matter in Campbell, California on December 13, 2006.

Jacques Maitre, M.S.W., Director's Designee for Fair Hearings, represented the service agency, San Andreas Regional Center (SARC).

Claimant Michael V. was represented by his parents Maureen and Nick V.

The matter was submitted for decision on December 13, 2006.

ISSUE

Whether SARC should be required to fund the entire cost of the van conversion and ramp system installed by Claimant's parents on their van.

FACTUAL FINDINGS

1. Michael V. (Claimant) was born October 13, 1998, and is eight years old. He has a diagnosis of cerebral palsy and seizure disorder. Claimant has seizures once or twice a week despite taking medications to control the condition. He is moderately mentally retarded and is not able to communicate. He periodically engages in aggressive behavior. Claimant requires assistance with most of his self-care, and requires adaptive equipment in order to move about. He cannot walk or get into or out of his family's vehicle independently. Claimant has a shunt in

his head, and is at risk of serious injury should he incur any trauma to the head or neck. Claimant lives with his parents and five-year-old brother in San Jose.

2. Claimant's parents transport him to his frequent medical and therapy appointments, and often take him on community outings. They typically travel with several pieces of Claimant's equipment, which includes an adapted bike, a walker and a manual wheelchair. When they are away from home for extended periods they also transport a special toileting system for Claimant. A large vehicle is required in order to accommodate Claimant's equipment and all of his family.

3. Claimant's parents decided to purchase a Chrysler Town and County minivan as their family vehicle because it is spacious, durable and reliable. They selected an in floor, power ramp system as the best entry and exit system to facilitate transport of Claimant in the minivan because such a system would allow Claimant to be rolled into and out of the minivan in his wheelchair. Claimant's parents felt that given Claimant's medical needs, a ramp system would be safer than would a van lift and tie-down system because it would reduce the likelihood of injury to Claimant from bumping his head or falling out of his wheelchair upon entering or exiting the minivan, and would allow Claimant to get in and out of the minivan more easily and faster in case of an emergency (e.g., when he has a seizure).

4. A van conversion is required to install an automatic ramp system in a minivan. Among other things, the floor and door sills of the van must be lowered, the ceiling raised and a power, sliding door installed. Claimant's mother contacted several vendors to obtain estimates of the cost of conversion. The lowest estimate, $20,160, was submitted by NorCal Mobility, a SARC vendor.

5. On August 26, 2006, Claimant's mother wrote a letter to SARC requesting that it fund the cost of an automatic ramp for their family minivan in the amount of $20,160. She noted that it was becoming increasingly unsafe for her and her husband and other caregivers to lift Claimant from his wheelchair into their vehicle given his current weight of 65 pounds. She also noted that California Children's Services had rejected her request for a wheelchair van lift and tie downs as not medically necessary and that their insurance coverage excluded wheelchair ramps.

In addition, Claimant's mother included a letter dated June 1, 2006, from Claimant's pediatrician Keith Ahmann, M.D. with the funding request. The letter stated in pertinent part:

> As the pediatrician for [Claimant] since March 2005, I am writing to inform you that he needs a wheelchair ramp van for transportation purposes. He has triplegic cerebral palsy which has not allowed him to develop the gross motor skills for walking or transferring himself independently from his wheelchair to his vehicle and vice versa. He currently weighs 65 pounds and it is becoming unsafe for his parents and other caregivers to continue to lift him from his chair into the vehicle.

Claimant's parents admitted at hearing, however, that they never asked Dr. Ahmann regarding alternate entry and egress systems, such as a van lift and tie-downs.

6. On October 5, 2006, SARC denied the funding request submitted by Claimant's mother noting SARC does not fund the cost of conversions. However, SARC acknowledged the need for an entry/exit system to facilitate Claimant's use of the family vehicle without causing undue risk to his parents in lifting him. SARC felt this goal could be accomplished through installation of a van lift and tie-downs, a system which has been successfully used by numerous other SARC clients. It offered to pay $7,000, the equivalent of the average cost of a van lift and tie-downs, which Claimant's family could use toward the conversion. At the informal meeting SARC offered to fund $9,000 toward the conversion. The offer was rejected and Claimant filed a timely request for fair hearing. Claimant's parents authorized conversion of the van by NorCal Mobility while the fair hearing request was pending.

7. Claimant's parents maintain that SARC's refusal to fully fund the van conversion violates the Lanterman Act[1] because it is based on an inflexible policy of only paying for a van lift and tie-downs and does not take into account Claimant's individual needs. They argue that a ramp system is necessary for Claimant because it permits faster entry and exit from the minivan, which is safer and more like the normal entry and egress from a vehicle. In addition, without the conversion there is less headroom clearance upon entering the minivan than would be present with a regular van. Claimant's parents feel this would be unsafe for Claimant because at times he becomes aggressive and resistive and could rise up and bump his head, which poses a serious threat to his health due to the shunt in his head.

8. At hearing Claimant's parents submitted several letters in support of their contention that a van conversion was necessary given Claimant's medical needs. In a letter dated October 26, 2006, Stephen L. Huhn, M.D. notes that Claimant has been followed in his neurosurgery practice for several years, and that Claimant has multiple disorders. Huhn then states,

> As a result of these disorders he has very limited motor ability and is completely dependent upon his parents for daily care and activity. He requires multiple therapies related to these disorders, and transportation that can accommodate his disability and associated equipment. It is my understanding that the family has purchased a minivan for purposes of transportation and that this van requires modifications for wheelchairs and transfers. As [Claimant] grows he will have more difficulty with auto transfers and seating, therefore the modification of the van should appropriately include lowering the floor to accommodate his special needs. I would strongly support these modifications as the changes will result in better safety and ease of transitions for a patient who has significant motor and cognitive restrictions.

[1] Lanterman Developmental Disabilities Service Act (Welf. & Inst. Code, § 4500 et seq.)

At hearing, Claimant's parents admitted that they never asked Dr. Huhn regarding alternate entry and egress systems, such as a van lift and tie-downs.

9. In a letter dated October 30, 2006, Donald M. Olson, M.D., addresses "the need for a modified van for transportation" of Claimant. He notes that Claimant is unable to transfer himself from chair to vehicle and requires wheelchair transport, and that having someone transfer Claimant will become increasingly difficult as Claimant continues to grow. Olson also notes that Claimant's behavioral problems, such as aggressive outbursts, and his epilepsy, will make transfers more difficult. And he points out that when Claimant's family goes on outings they are required to transport a walker, adaptive bicycle and adaptive toileting in addition to Claimant's wheelchair. Olson's comments suggest he support's Claimant's need for a modified van, although he never expressly so states.

10. Claimant's parents also contend that SARC is improperly dictating the type of vehicle that they must purchase. They feel that they are being told by SARC to buy a regular van and not a minivan because SARC will only fund a lift and tie-downs, which they believe are not appropriate for a minivan. Claimant's parents believe that if they were to put a lift on their minivan without a conversion, the head clearance would be insufficient and unsafe for Claimant. They also feel that if a lift were placed in their minivan, there would not be enough room for all of Claimant's equipment.

11. Claimant's parents primarily rely on a letter from Tom Curran, Physical Therapist and Chief Therapist for California Children Services-Santa Clara, to support their contention a van lift and tie-down system would be unsafe for Claimant. In a letter dated November 30, 2006, Curran addresses the need for "a van adaptation to enlarge the van doorway and add a lift to get [Claimant] and his wheelchair into the van." Curran opines that the van doorway size would be too low for Claimant because it might require him to duck his head when entering the van. He noted that this could be problematic because although Claimant is physically capable of bending forward a bit to accommodate the low doorway, his level of maturity and cooperation could preclude this from happening. Curran also opines that alternatively a caregiver could assist Claimant to bend his head forward, but noted that Claimant might resist as he occasionally becomes agitated. Curran therefore felt that the results of this method would be unpredictable.

12. Claimant's parents next contend that SARC's argument that the lift and tie-downs system is what it has traditionally and successfully used is antiquated and fails to recognize that conversion has become the standard among regional centers. In support of their contention, Claimant's parents rely on a couple of decisions and several purchase orders from other regional centers which resulted in or authorized funding of a van conversion. However, there was no evidence of the circumstances surrounding issuance of the purchase orders and the two decisions upon which Claimant's parents rely are distinguishable from the subject case. In the first case the regional center did not contest the need for a converted van, but had set an inflexible maximum amount that it would pay toward the conversion. In this case, SARC contests the need for a van conversion. It maintains a van lift and tie-downs system is a more cost effective way to

accomplish the same goal. And it does not have a maximum amount it will pay for a van lift and tie-down system or a van conversion. In the second case both parties agreed that van conversion was appropriate and the only issue was who would pay the conversion. As previously noted, in this case the need for a van conversion is contested.

13. Finally, Claimant's parents argue that they followed the appeals procedures and if they are entitled to funding of the entire cost of the van conversion, they should not be penalized for their decision to complete the conversion prior to the fair hearing. They note that the only issue to be decided at hearing is whether they will receive full or partial payment. SARC does not appear to contest this contention.

14. The Regional Center takes the position that it should not be required to fund the cost of a full van conversion and ramp system in the amount of $20,160 because a lift and tie-down system will achieve the same goal in a more cost-effective manner. At hearing, Jacques Maitre, the Director's Designee for Fair Hearings, explained that since it is part of the parental obligation to transport a minor child to community destinations, SARC will not purchase a vehicle for a family. However, SARC recognizes that the functional capacity of some children causes them not to be able to enter and exit the family vehicle without assistance. SARC also recognizes that it has an obligation to act to ameliorate the effect of a developmental disability, including purchasing and installing a van lift and tie-downs so that a child may travel safely in their family vehicle. SARC is willing to fund such a system, which typically ranges in cost from $4,000 to $7,000, for Claimant. It initially offered to fund $7,000 toward the conversion since that is the high-end of the average cost of a van lift and tie-downs. SARC later increased its offer to $9,000, which it is still willing to pay, because of the high cost of the system chosen by Claimant's parents. SARC is not willing to accept responsibility for structural modification to the family vehicle, such as raising the roof or lowering the floor. SARC argues that paying for the full van conversion would not be a cost effective use of public funds because there is no evidence the more traditional and affordable van lift and tie-downs system could not accomplish the same purpose of getting Claimant safely in and out of the family vehicle.

LEGAL CONCLUSIONS

1. Under the Lanterman Developmental Disabilities Service Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.),[2] the State of California accepts responsibility for persons with developmental disabilities (§ 4501) and pays for the majority of their "treatment and habilitation services and supports" in order to enable such persons to live in the least restrictive environment possible (§ 4502, subd. (a)). The State agency charged with implementing the Lanterman Act is the Department of Developmental Services (DDS). The Lanterman Act authorizes DDS to contract with regional centers to provide developmentally disabled individuals with access to the services and supports best suited to them throughout their lifetime. (§ 4620.)

[2] All citations are to the Welfare and Institutions Code unless otherwise indicated.

2. In order to determine how an individual client is to be served, regional centers are directed to conduct a planning process that results in an individual program plan (IPP) designed to promote as normal a life as possible. (§ 4646; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389.) The IPP is developed by an interdisciplinary team and must include participation by the client and/or his or her representative. Among other things, the IPP must set forth goals and objectives for the client, contain provisions for the acquisition of services (which must be provided based upon the client's developmental needs), and reflect the client's particular desires and preferences. (§ 4646; § 4646.5, subds. (a)(1), (a)(2) & (a)(4); § 4512(b); § 4648, subd. (a)(6)(E).)

3. Although an IPP must reflect the needs and preferences of the consumer (§ 4512, subd. (b), [3] a regional center is not mandated to provide all the services a consumer may require. A regional center's provision of services to consumers and their families must "reflect the cost-effective use of public resources." (§ 4646, subd. (a).) [4] A regional center also has discretion in determining which services it should purchase to best accomplish all or any part of a consumer's IPP. (§ 4648.) This entails a review of a consumer's needs, progress and circumstances, as well as consideration of a regional center's service policies, resources and professional judgment as to how the IPP can best be implemented. (§§ 4646, 4648, 4624, 4630, subd. (b) & 4651; and see *Williams v. Macomber* (1990) 226 Cal.App.3d 225, 233.)

4. A review of the evidence indicates SARC considered the relevant circumstances, and that it reasonably determined that a van conversion would not be a cost-effective use of public resources. Although Claimant's parents submitted several letters which supported van modification, none of the letters indicated that a van lift and tie-downs system would not meet Claimant's needs. Claimant's parents admitted at hearing that they did not ask his doctors if such a system would work for Claimant. A review of the letters submitted by Drs. Ahmann,

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[3] Welfare and Institutions Code section 4512, subdivision (b), states in pertinent part:

> " . . . . The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The **determination shall be made on the basis of the needs and preferences of the consumer** or, when appropriate, the consumer's family, **and shall include consideration of a range of service options** proposed by individual program plan participants, **the effectiveness of each option in meeting the goals stated in the individual program plan**, **and the cost-effectiveness of each option**. . . . Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan." (Emphasis added.)

[4] Welfare and Institutions Code section 4646, subdivision (a), states in pertinent part:

> " . . . It is further the intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, . . . and reflect the cost-effective use of public resources."

Huhn and Olson indicates that they were all concerned about caregivers continuing to lift Claimant in order to transfer him from his wheelchair to the family vehicle. A van lift and tie-downs would eliminate this need for lifting. It is also noteworthy that while all of Claimant's doctors seemed to support van conversion, none of them stated it was medically necessary. Claimant's parents and physical therapist Curran suggested there might be a risk of injury to Claimant from bumping his head on a low van doorway if the doorway was not enlarged and a "lift" installed. However, Curran also suggested ways to reduce this risk, such as having Claimant duck his head or having someone assist Claimant lean forward. Although a van conversion (i.e., installation of a power ramp system) may be the vehicle entry and egress system preferred by Claimant's parents, van conversion is very expensive. The van lift and tie-down system offered by SARC has been successfully used by many SARC clients. There is no evidence that such a system would not also meet Claimant's needs and it is much less costly than van conversion. It therefore constitutes a more cost-effective use of public funds. Claimant bears the burden of proving by a preponderance of the evidence that a van conversion is required to meet Claimant's need to enter and exist the family vehicle. He has failed to meet that burden. However, SARC acknowledges that it has an obligation to provide a vehicle entry/exit system to facilitate Claimant's use of the family vehicle and ameliorate the effects of Claimant's disability. It is willing to fund $9,000, the cost equivalent of a van lift and tie-downs, which Claimant's parents can use toward the van conversion.

ORDER

1. Claimant's appeal seeking full funding for a van conversion in the amount of $20,160 is denied.

2. SARC shall fund $9,000, the cost equivalent of a van lift and tie downs, toward the van conversion.

DATED: January 5, 2007

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CHERYL R. TOMPKIN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is a final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety (90) days.